IN THE HIGH COURT JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.253 OF 2007

Mrs. Cicilia Anthony Paul .. **Appellant**
(Orig.Deft.No.2)

Versus

1. Mr. Bhishma Pithamah Maniram .. **Respondent**
(Orig.Plaintiff)

2. Mr. K. Krishna Mohananand
Giri Goswami .. **Respondent**
(Orig. Defendant No.1)

3. Mr. Anthony Rock Paul .. **Respondent**
(Orig. Defendant No.3)

Shri Y.S. Jahagirdar with Shri R.S. Apte i/b. Shri Mandar Limaye for the Appellant
Shri V.G. Mujumdar for the Respondent No.1
Ms. Phadke for the Respondent No.3

CORAM : S.R.SATHE,J.
DATED : 05/10/2007

ORAL ORDER :-

1. Appeal is heard finally at admission stage.

2. The Appellant-original defendant No.2 has preferred this appeal against the order passed below Exh-5 in Special Civil Suit No.8 of 2006 whereby the Plaintiff's application for temporary injunction restraining defendant No.2 from creating third party interest and changing the nature of the suit property

during the pendency of the suit was allowed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

3. The brief facts giving rise to this appeal are as under :-

The suit property bearing CTS No.402 together with four rooms, CTS No.403 together with eleven rooms and CTS No.404 together with three rooms, situated at Mangalwarpeth, Pune described in detail in paragraph-1 of the plaint was originally owned by one Mr. Ramkrishna Giri Goswami who was 'Mahant' and 'Vahivatdar' of Dharmanath Bova/Baba Sansthan. The said Dharmanath Sansthan is not a public trust registered under the Bombay Public Trust Act. Mr.Ramkrishna Giri expired on 28/11/1901. However by his Will, he had bequeathed the suit property to Amrit Giri who died in the year 1911. He was succeeded by one Balaram Giri and after his death one Ramprasad Giri succeeded him and became the owner of the suit property. One Purushottam Giri had filed suit No.138 of 1918 against Ramprasad Giri. The said suit was decreed by the High Court and it was held that Mr. Purushottam Giri is the owner of

the suit property. Naturally, after the death of Purushottam Giri, his heirs became the owner of the suit property. The heir of Purshottam Giri namely Krishnanand Giri was Mahant Tirpuri Bhairavai Math. He was Sanyasi and unmarried. His sister Satyabhama had predeceased him. Thus, after the death of Krishnanand Giri, Mr. Bhishma Pithamah Maniram i.e. present Plaintiff being the brother and only legal heir of Krishnanand Giri became the owner of the suit property. His name was also recorded in the record of rights on 06/11/1991. He also paid wealth tax in respect of the suit property.

4. The Plaintiff had in fact filed the suit No.367 of 1995 through defendant No.3 who was then power of attorney holder of Plaintiff against Amrit Singh Dayal Singh Khanduja for declaration and permanent injunction and it was held in the said suit that Plaintiff is the owner of the suit property.

5. According to Plaintiff, the defendant No.1 K.Krishna Mohananand Giri started claiming that he is the 'Chela'/ disciple of Late P. Krishnanand Giri

though in fact Krishnanand Giri had not at all appointed defendant No.1 as his disciple. On the contrary, P. Krishnanand had executed an affidavit before his death declaring the present Plaintiff as his successor to his all personal property including the suit property. In fact, the claim of defendant No.1 regarding suit property was also denied in Regular Civil Suit No.367 of 1995.

6. It is the case of the Plaintiff that defendant Nos.2 and 3 are the wife and husband of each other. The defendant No.2 was dealing in business of sale and purchase of immovable properties. Plaintiff had appointed defendant No.3 as his Power of Attorney on 12/12/1993. However, when Plaintiff realized that the defendant No.3 has not discharged his duty properly. plaintiff revoked the said power of attorney by issuing notice dated 08/01/2005. Not only that but he also issued public notice in daily newspaper dated 10/01/2005 to that effect.

7. According to Plaintiff, taking disadvantage of the fact that Plaintiff was residing at Mysore the

defendant No.1 by making misrepresentation and exercising fraud got his name entered in the record of rights in respect of the suit property. When Plaintiff came to know about the same, he made a complaint to concerned authority. The defendant Nos.1 and 2 in collusion with the defendant No.3 entered into fraudulent transaction of purported sale deed dated 29/07/2004 executed by the defendant No.1 in favour of defendant No.2. In fact, defendant No.2 had already agreed to purchase the suit property from Plaintiff for total consideration of Rs.2,95,00,000/- and paid Rs.44,00,000/- by cash as well as by cheques in the name of Plaintiff's sons and daughters. She had also promised to pay the balance consideration and for that executed indemnity bond on 13/05/2004. The said bond was also registered with Sub-registrar, Haveli and was never revoked. Thus, though defendant No.2 was fully aware of the fact that Plaintiff was the owner of the suit property, she got the sale deed of the suit property executed by the defendant No.1 in her favour for Rs.60,00,000/- only. It was also noticed by the Plaintiff that defendant No.1 falsely represented himself as owner of the suit property and recovered

illegal compensation of Rs.60,91,373/- from Pune Municipal Corporation towards the acquisition of some portion of the suit property. Plaintiff, therefore, filed Special Civil Suit No.1220 of 1995 against Government, Pune Municipal Corporation and defendant No.1. However, behind the back of Plaintiff, defendant No.3 fraudulently withdrew the said suit on 13/08/2004.

8. Thus, when Plaintiff came to know that defendant Nos.1 to 3 in collusion with each other fraudulently entered into sale transaction dated 29/07/2004, the Plaintiff filed the present suit for declaration that he is the owner of the suit property and that the sale deed dated 29/07/2004 executed by defendant No.1 in favour of defendant No.2 is null and void and not binding on Plaintiff. He also prayed for permanent injunction restraining defendant No.2 from creating third party interest or causing any change in the suit property.

9. The defendant Nos.1 and 2 filed their say to Plaintiff's application for temporary injunction and opposed the same. The defendant No.2 contended that the

present suit is in fact filed by the power of attorney holder. The defendant No.2 has become the owner of the suit property by virtue of a registered Sale Deed dated 29/07/2004 and the property is in her possession. Not only that but according to her, after purchase of the property she spent huge amount for lay out and securing necessary sanction for the construction. According to her, the suit property was all along standing in the name of defendant No.1 and defendant No.1 alone was having exclusive title to the suit property. His name was also appearing in the record of Pune Municipal Corporation. It is only after verifying the title of defendant No.1 to the suit property. The defendant No.2 purchased the suit property. Thus, according to defendant No.2, she is a bonafide purchaser and if interim injunction as prayed for is granted then she would suffer irreparable loss.

10. The defendant No.2 also contended that the alleged power of attorney holder of Plaintiff namely Ramjanam Banwari had received amount of Rs.5 lakhs from defendant No.2 in the year 2004 as hand loan by representing himself as the Power of Attorney holder

for Plaintiff. According to defendant No.2, with a view to help Ramjanam Banwari, a cheque of Rs.5 lakhs was issued. However, the said Ramjanam Banwari forged the said cheque and instead of Rs.5 lakhs figure was written as Rs.2,51,00,000/-. When she came to know about the same, she filed complaint with Police against the said Ramjanam Banwari. So, with a view to give go by to the said complaint the present suit is filed by Banwari but in the name of Plaintiff. According to defendant No.2, Ramjanam Banwari even prepared a fraudulent document dated 13/05/2004 to show that the declaration cum indemnity bond has been executed by her. The defendant No.2 therefore contended that Plaintiff is not entitled to get temporary injunction as prayed.

11. After hearing both the learned Advocates and considering the documents produced by both the parties, learned Trial Judge came to the conclusion that Plaintiff is the owner of the suit property and defendant Nos. 1 to 3 in collusion with each other executed a Sale Deed dated 29/07/2004. According to learned Trial Judge, Plaintiff prima facie proved that

he is the owner of the suit property and the defendant Nos. 1 to 3 are in fact, not having any right, title and interest in the same. He, therefore, held that the Plaintiff has made out a prima facie case for granting temporary injunction and balance of convenience is also in his favour. Naturally, he allowed the application for temporary injunction and restrained defendant No.2 from alienating the suit property till the disposal of the suit.

12. Being aggrieved by the above mentioned order, the original defendant No.2 has filed the present appeal. In this appeal before me, Shri Y.S. Jahagirdar, learned Senior Advocate for the original defendant No.2 has urged only two points. Firstly, he submitted that the learned Trial Judge has failed to consider the fact that the defendant No.2 has purchased the suit property under registered Sale Deed from defendant No.1 who was the original owner of the suit property. Secondly, he canvassed before me that even according to Plaintiff, he had agreed to sale the suit property to defendant No.2 for Rs.2,95,00,000/- and accepted Rs.44,00,000/-. So, ultimately, the defendant No.2 is to receive the

property whether from Plaintiff or through defendant No.1. He, therefore, submitted that under such circumstances, there is no need to restrain the defendant No.2 from alienating the suit property particularly when the defendant No.2 has parted with such huge amount and also made further expenditure on the suit property. He, therefore, submitted that Plaintiff has not made out any prima facie case and the balance of convenience is also not in favour of Plaintiff. As against this, Shri Mujumdar, learned Advocate for the Plaintiff supported the order passed by the learned Trial Judge and submitted that defendant No.1 had no title to the suit property so the alleged sale deed executed by defendant No.1 in favour of defendant No.2 is not legal and valid and defendant no.2 will not get any right under the said Sale Deed. The learned Advocate for the Plaintiff also argued before me that the defendant No.2 has in fact not paid the agreed consideration of Rs.2,95,00,000/- to Plaintiff and on the contrary, by joining hands with defendant Nos.1 to 3. She got false sale deed executed in her favour. According to him, if temporary injunction is not granted and if the defendant No.2 is

allowed to create further third party interest in the suit property then it would create further complications and would give rise to multiplicity of proceedings. He, therefore, submitted that the appeal be dismissed.

13. It is not in dispute that the suit property was originally owned by Ramkrishna Giri Goswami who was 'Mahant' and 'Vahivatdar' of Dharmanath Bova/Baba Sansthan. His name was also entered in the record of rights. It is also not disputed that Ramkrishna Giri made a Will and bequeathed the property to Amrit Giri and after his death, Balaram Giri became the owner of the same. The Plaintiff has come out with a case that Krishnanand Giri became owner of the suit property. It is pertinent to note that even from the pleadings of the defendants it is very clear that they are also admitting that suit property was at one point of time owned by Mahant Krishnanand Giri. It is Plaintiff's case that he became the owner of the suit property after the death of Krishnanand Giri on 18/09/1989. Prima facie, there is nothing on record to show that the case of Plaintiff that he became the owner of the

said property being the only legal heir of Krishnanand Giri is incorrect. It is worth to note that the defendant No.2 has not adduced any prima facie evidence to show as to when and how the defendant No.1 became the owner of the suit property. Merely because at some stage, in the Municipal Corporation record the name of defendant No.1 was entered as owner of the said property one can not jump to the conclusion that defendant has prima facie shown that he is the owner of the suit property. We also can not ignore the fact that though the defendant No.1 claimed the compensation amount of the suit property, the said decision regarding paying the compensation of the suit property to defendant No.1 is challenged by the present Plaintiff and the said matter is subjudice. What is more to be noted is admittedly the present Plaintiff had filed Regular Civil Suit No.367 of 1995 in Civil Court, Pune in respect of the suit property. In that suit, the defendant No.1 had filed an application claiming right, title and interest in the suit property but the said application was dismissed. There is nothing on record to show that the defendant No.1 challenged the said order in the Higher Court and got

it set aside. On the contrary, it is an admitted fact that in the said Regular Civil Suit No.367 of 1995 finding was recorded by the Court that the present Plaintiff is the owner of the suit property. So, under such circumstances, due weightage has to be given to the said finding. It also shows that defendant No.1 had accepted the said finding and position. So, in a way now he is estopped from contending that Plaintiff is not owner but he is the owner.

14. There is another very important circumstance which goes against the defendant No.2. It is an admitted fact that the defendant No.2 had in fact agreed to purchase the suit property from the Plaintiff. It obviously means that the defendant No.2 had admitted the present Plaintiff as the owner of the suit property. So, now it does not lie in the mouth of defendant No.2 to contend that Plaintiff is not the owner of the suit property. This also shows that there is no substance in the contention of defendant No.2 that she is the bonafide purchaser for value without notice. If defendant No.2 had not ascertained the title of Plaintiff to the suit property she would not have

parted with such huge amount of Rs.44,00,000/- and agreed to purchase the suit property from the Plaintiff. So, I am not inclined to accept the contention of the defendant No.2 that she is the bonafide purchaser for value without notice.

15. Much is made about the fact that the Sale Deed has been executed by defendant No.1 in her favour. It is pertinent to note that the present defendant No.2 is the wife of defendant No.3 who was in fact power of attorney holder of Plaintiff at one point of time. It is clear from the material on record that on 13/05/2004, the defendant No.2 had in fact agreed to purchase the suit property from Plaintiff and thereafter, necessary undertaking was also executed by her. Even then, it is shown that subsequently she purchased the suit property from the defendant No.1 on 29/07/2004 and that too only for the amount of Rs.60,00,000/-. It must be noted that the defendant No.3 who is husband of defendant No.2 has signed the said sale deed as a witness, executed by the defendant No.1 in favour of defendant No.2. So, these facts and circumstances prima facie do indicate that there was

collusion between the Plaintiff Nos. 1 to 3 in executing the Sale Deed dated 29/07/2004. So, having regard to these facts, learned Trial Judge has rightly observed that Plaintiff has made out a prima facie case for granting temporary injunction.

16. Turning to the question of balance of convenience and irreparable loss, it must be noted that the Sale Deed on which defendant No.2 is relying can not be said to be legal and valid because prima facie it appears that the defendant No.1 from whom the defendant No.2 purchased the suit property had in fact no right, title and interest in the same. So, under such circumstances if temporary injunction is not granted and the defendant No.2 is allowed to create third party interest in the suit property and changing the position of the same then it would certainly give rise to further complications and multiplicity of proceedings. So, considering these aspects it has to be held that the balance of convenience is in favour of Plaintiff and irreparable loss is likely to be caused to the Plaintiff if temporary injunction is not granted. Though defendant No.2 has parted with the

amount of Rs.44,00,000/- she is in possession of the land. Besides this, while granting temporary injunction some condition can be imposed on Plaintiff as a result of which the interest of defendant No.2 will also be protected.

17. In view of the above, I do not find that order passed by the learned Trial Judge granting temporary injunction and restraining the defendant No.2 from creating third party interest and changing the position of the suit property till the disposal of the suit is illegal. It can not be said that the said discretionary order of injunction passed by the learned Trial Judge is arbitrary or capricious. So, under such circumstances, there is no need to set aside the said order in the present appeal. Hence, I pass the following order :-

O R D E R

The appeal is dismissed.

However, the defendant No.2 and their agents or servants are hereby restrained from alienating the suit property or creating any third party interest in the

suit property in any manner and changing the nature of the suit property till the disposal of the suit, on a condition of Plaintiff submitting an undertaking to this Court within one week from today that Plaintiff shall compensate the defendant No.2 in case after the Trial it is held that the Plaintiff is not entitled to such permanent injunction.

The trial Court is directed to decide the suit on merits according to law within six months from today.

Under the circumstances of the case, parties to bear their own costs of this appeal.

At this stage, Shri Apte, learned Advocate for the original defendant No.2 submitted that though direction is given by this Court to dispose off the suit within 6 months, today one is not certain as to whether the Court would be in a position to dispose off the suit accordingly. He also submitted that in this Court he has also filed a separate application seeking permission to carry out development in the suit property. However, in view of my above mentioned order it is not necessary to pass any further order on the said application at this stage.

However, defendant No.2 is at liberty to move the Trial Court in that behalf and in that event the Trial Court to decide the said application on merits according to law after hearing both the parties.

(S.R.SATHE,J.)